IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5068 OF 2004

ALONG WITH

CRIMINAL APPLICATION NO.5694 OF 2004

Shri.Ramchandra Gajanan Naik ...Applicant

Versus

Japfa Oberoi Agro Ltd. & Anr. ...Respondents

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Mr.V.P.Vaze for Applicant.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 20, 2004.

P.C.

1. Only two contentions have been raised before me. The first contention is that the blank cheques in question were handed over to the complainant in the year 2001, which have been misused in the year 2003 by the complainant. This cannot be the basis for discharge. That is matter

for trial. In view of the legal presumption, the presumption can be rebutted, upon adduction of evidence at the trial.

2. The second contention raised is that the power of attorney of the person who has instituted the complaint on behalf of the complainant, is not properly notarised. Even this is a matter for trial and cannot be the basis for discharge.

3. Learned Counsel for the Applicant has placed reliance on the decision of the Andhra Pradesh High Court reported in **1997(4) All MR (Journal) 58 in the case of Satish & Co. vs. S.R.Traders & Ors.** According to him this decision was placed before the lower Court, which was not even considered. On perusing this decision, it is more than clear that the question was decided only after a full-fledged trial. If it is so, the decision can be of no avail to the present case, which is at the stage of quashing. Rejected.

4. It is made clear that the Trial Court shall decide the case on its own merits, in

accordance with law, uninfluenced by any of the observations made in the impugned order or for that matter, the present order.

5. Applications disposed of on the above terms.

A.M.KHANWILKAR, J.